

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021100232

ORDER DENYING MOTION TO DISMISS ISSUES 1 AND 2,
AND GRANTING MOTION TO DISMISS ISSUE 3

OCTOBER 27, 2021

On October 20, 2021, San Francisco Unified School District filed a motion to dismiss Student's complaint entirely with the Office of Administrative Hearings, referred to as OAH. On October 25, 2021, Student filed an opposition. San Francisco filed a reply in support of the motion to dismiss on October 26, 2021.

Student's complaint alleges three issues. Issue 1 alleges San Francisco denied Student a free appropriate public education, referred to as FAPE, during the 2021-2022 school year by failing to complete an appropriate individualized education program, referred to as an IEP, including updated goals, placement, and services, assess and provide for assistive technology, provide a medically trained aide for the bus and

classroom, offer extended school year services, and to offer placement in the least restrictive environment. Issue 2 alleges San Francisco procedurally denied Student a FAPE by failing to consider private school recommendations, delaying the IEP meeting process, failing to provide requested documentation, and presenting an IEP without Parent's input. Issue 3 alleges San Francisco discriminated against Student and violated Section 504 of the Rehabilitation Act of 1973 and Section 1983 of Title 42 United States Code, the Americans with Disability Act.

ISSUES 1 AND 2

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction such as, civil rights claims, section 504 claims, enforcement of settlement agreements, or incorrect parties, special education law does not provide for a summary judgment procedure. Here, the motion to dismiss is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits.

San Francisco alleges it sent Student's Guardian an assessment plan in May 2021 for Student's triennial reassessment. San Francisco further alleges Guardian did not consent to the assessment plan until August 20, 2021; and has not yet made Student available for the assessment. San Francisco argues because Guardian has not made Student available for the triennial reassessment that Student's issues fail as a matter of law. San Francisco's motion to dismiss is a motion for summary judgment as San Francisco is seeking a ruling without an evidentiary hearing regarding its defense to Student's claims. Summary Judgment will be granted when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. However, OAH does not provide for a summary judgement procedure. Further, nothing prevents San Francisco from filing its own action to have Guardian make Student available for assessment. (*Castro Valley Unified School District v. Student* (2016) OAH

Case No. 2015110947; Ed. Code, §§ 56381, subd. (f)(3), 56501, subd. (a)(3).) Accordingly, the motion to dismiss is Issues 1 and 2 is denied.

ISSUE 3

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education,” referred to as FAPE, and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to decide claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, the Americans with Disability Act (42 U.S.C. §§ 1201, et seq.), or the Unruh Civil Rights Act (Civ. Code, § 51).

Student’s Issue 3 alleges San Francisco discriminated against Student on the basis of a disability in violation of Section 504 and the ADA. Student did not oppose the

motion to dismiss Issue 3, and OAH does not have jurisdiction over Issue 3. Therefore, Issue 3 is dismissed.

ORDER

1. San Francisco's Motion to Dismiss Issues 1 and 2 is denied.
2. San Francisco's Motion to Dismiss Issue 3 is granted.
3. The matter shall proceed as scheduled.

IT IS SO ORDERED.

A handwritten signature in cursive script that reads "Linda Johnson".

Linda Johnson

Administrative Law Judge

Office of Administrative Hearings